

Item # \_\_\_\_\_ Prepared by: Mary L. Baker

Approved by: Robert B. Rolwing

**A JOINT ORDINANCE AMENDING THE MEMPHIS AND SHELBY COUNTY ZONING ORDINANCE-REGULATIONS ADOPTED BY THE SHELBY COUNTY BOARD OF COMMISSIONERS ON OCTOBER 6, 1980, AND BY THE COUNCIL OF THE CITY OF MEMPHIS ON OCTOBER 7, 1980, BEING RESOLUTION AND ORDINANCE NO. 3064, AS AMENDED, SO AS TO MAKE CERTAIN CHANGES THEREIN AS FOLLOWS:**

- (1) **AMEND APPENDIX A ZONING, SECTION 2 TO DEFINE THE TERM “FAMILY RECREATION CENTER(S)”.**
- (2) **AMEND APPENDIX A ZONING, SECTION 2 TO DEFINE THE TERM “PARK(S)”.**
- (3) **AMEND CHART 1, FOOTNOTE 18, REQUIRING ADULT ENTERTAINMENT USES TO BE LOCATED A MINIMUM DISTANCE OF 1,500 FEET FROM CERTAIN IDENTIFIED USES, TO ADD “FAMILY RECREATION CENTER(S)” AS ONE OF THE IDENTIFIED USES LISTED.**

***ZTA No. 09-002CC. Sponsored by Commissioner Ritz.***

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**WHEREAS,** Childhood obesity and associated disease such as Diabetes is a growing public health issue; and

**WHEREAS,** Safe access to sports and other recreational activities helps children avoid becoming obese and provides many other benefits to the social and psychological development of children; and

**WHEREAS,** The City Council and Board of County Commissioners have had the opportunity to review a report concerning the Location and Land Use of Identified Sexually Oriented Businesses in Memphis; and

**WHEREAS,** The City Council and Board of County Commissioners have had the opportunity to review a report entitled *Regulating Adult Oriented Establishments*, December 11, 2006, Report of Duncan Associates for the Memphis Shelby Crime Commission, Office of Planning and Development; and

**WHEREAS,** The City Council and Board of County Commissioners find that each of the negative secondary effects established and documented in that study constitutes harm that local government has a substantial government interest in preventing and/or abating. This substantial government interest in preventing adverse secondary effects, which is the rationale for regulating adult-oriented businesses, exists independent of any comparative analysis between adult-oriented and non-adult-oriented businesses. Additionally, the interest in regulating adult-oriented businesses extends to preventing future secondary effects of adult-oriented businesses currently operating in Shelby County as well as future adult-oriented businesses that may locate in Shelby County. The City Council and Board of County Commissioners find that the cases and documentation referenced therein are reasonably believed to be relevant to such secondary effects; and

**WHEREAS,** Adult entertainment uses located in proximity to parks, community centers and other family recreation centers thus interfere with safe and otherwise appropriate access by children to sports and recreation activities which take place there; and

**WHEREAS,** The current regulations pertaining to adult entertainment can be improved to include a definition of a park or family recreation center and to include family recreation center **and day care center** as uses **buffered by a** 1,500-foot space from new adult entertainment uses; and

**WHEREAS,** to clarify and establish a distance between family recreation centers **and day care centers** from adult entertainment uses, in order to avoid inappropriate establishment of an adult entertainment use near a park or family recreation center **or day care center**, and to allow and promote the benefits of childhood recreation uninterrupted by such concerns; and

**WHEREAS,** the Shelby County Board of Commissioners and the Memphis City Council find it is necessary to clarify current zoning regulations in Shelby County and the City of Memphis by adopting amendments to the regulations; and

**WHEREAS, These regulations do not affect sexually oriented businesses in existence at the time this ordinance is adopted so long as they remain in their current, grandfathered, locations; and**

**WHEREAS, The Regional Geographic Information Service has created a map showing that, with these few additional regulations in place, there remain numerous alternative locations for new sexually oriented businesses to occupy;**

**and**

**WHEREAS, the bulk of** these amendments were on the November 12, 2009, agenda of the Memphis and Shelby County Land Use Control Board for its consideration in accordance with the Joint Memphis and Shelby County Zoning Ordinance – Regulations and were unanimously recommended for approval by the Land Use Control Board.

**NOW, THEREFORE, BE IT ORDAINED** by the Board of County Commissioners and the Memphis City Council that the Joint Memphis and Shelby County Zoning Ordinance - Regulations be amended as follows:

**SECTION 1.** That Section 2, Interpretations and Definitions, of the Joint Ordinance and Resolution set out in the caption hereof and the same is hereby amended by adding the following definitions:

**FAMILY RECREATION CENTER(S):** Any facility, which is oriented principally towards meeting the athletic ~~and~~ or recreational needs of families and whose targeted customer is a minor child, including, but not limited to, the provision of one or more of the following: ice skating; roller skating; skateboarding; paintball; mini-golf; bowling; go-carts; climbing facilities; indoor and/or outdoor athletic fields or courts; or other similar athletic or recreation activities.

**PARK:** Any land or facility that is:

1. Set apart for recreation of the public, to promote its health and enjoyment; or
2. Property of the local, state or federal government, or any department or agency thereof, specifically designated as a park, community center, natural area or recreation area.

**SECTION 2.** That Appendix A, Zoning, Chart 1, Footnote 18 is hereby amended to read as follows:

Footnote 18 - Such use will not be located within 1,500 feet of any schools, day care centers, churches, parks, family recreation centers, residential use or residential zoning district as measured between property lines or applicable zoning district boundaries or within 1,500 feet of any other adult entertainment use. For purposes of C-N districts, no adult novelty sales are allowed.

**SECTION 3.** That the remaining, existing, sections and definitions in the joint Zoning Code dealing with regulation of adult businesses, including the definitions of section 2, and the provisions of Chart 1 and Footnote 18, are hereby re-adopted and continue in full force and effect.

**SECTION 4.** In case of conflict between this Ordinance or any part thereof, and the whole or part of any existing or future Ordinance of the City of Memphis or Shelby County, Tennessee, the most restrictive shall in all cases apply.

**SECTION 5.** That the provisions of this Ordinance are hereby severable. If any of these sections, provisions, sentences, clauses, phrases, or parts is held unconstitutional or void, the remainder of this Ordinance shall continue in full force and effect.

*[Rest of this page intentionally left blank.]*

**BE IT FURTHER ORDAINED,** That this amendment take effect from and after the date it shall have been enacted according to due process of law, and thereafter shall be treated as in full force and effect in the jurisdictions subject to the above mentioned Joint Ordinance and Resolution by virtue of the concurring and separate passage thereof by the Shelby County Board of Commissioners and the Council of the City of Memphis.

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Joe Ford, Interim County Mayor

Date: \_\_\_\_\_

ATTEST:

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Clerk of the Board of Commissioners

ADOPTED: \_\_\_\_\_